

Application No. : 10/631,882
Amdt. Dated : July 19, 2007
Reply To O.A. Of : April 19, 2007

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REMARKS

The Applicants thank the Examiner for his careful and thoughtful examination of the present application. By way of summary, Claims 1-5 and 7-21 were pending in this application. In the present amendment, the Applicants have cancelled Claims 1-3 and 14 without prejudice or disclaimer, amended Claims 13, 15-16, and 19, and added new Claim 28. Accordingly, Claims 4-5, 7-13, 15-21, and 28 remain pending for consideration.

Rejection of Claims 4 and 19

The Office Action rejected independent Claims 4 and 19 under 35 U.S.C. § 102(b) as being unpatentable over the U.S. patent no. 5,313,940 issued to Fuse et al. (the Fuse patent). The Examiner contends that Fuse shows an oximetric finger clip assembly including a two wavelength emitter, a detector, a clip housing, and tissue contacting surfaces covering the emitter and detector. The Examiner further contends that the tissue contacting surfaces described by Fuse comprise silicone lenses 21 and 22 and wavy material 23 and 24 covering a portion of the lenses.

Applicants respectfully traverse this rejection. Applicants previously argued that the Fuse patent does not disclose *inter alia* tissue contacting surfaces that "comprise silicone lenses . . . wherein said silicone lenses comprise a textured surface" as recited by Claims 4 and 19. Thus, the Fuse patent does not identically teach every element of Claim 4 or Claim 19 as required for anticipation under 35 U.S.C. § 102(b).

In rejecting Applicants' argument, the Examiner has taken the position that the Fuse oximeter includes a layered lens structure comprising lens elements 21 and 22 in combination with elastic members 23 and 24, which have wavy surfaces. However, Fuse does not disclose a layered lens structure, and "elastic members" 23 and 24, as described by Fuse, are not lenses. See Fuse col. 3, ll. 13-20. As described in the Fuse patent, "elastic members" 23 and 24 are made of "sponge or urethane" and "have round holes 23b and 24b which are in alignment with the optical axes of the LED 9 and the PD 10." See Fuse col. 3, ll. 13-20. In the Fuse oximeter, light from the LED passes through lenses 21 and 22. By contrast, "elastic members" 23 and 24 have holes in alignment with the optical axes of the LED.

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Accordingly, the Applicants believe that Claims 4 and 19 are patentably distinguished from the prior art. Claims 5, 7-13, and 15-18 which depend from Claim 4 and Claims 20-21 and 28 which depend from Claim 19 are believed to be patentable for the same reasons articulated above with respect to Claims 4 and 19, and because of the additional features recited therein. Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of Claims 4-5, 7-13, 15-21, and 28.

CONCLUSION

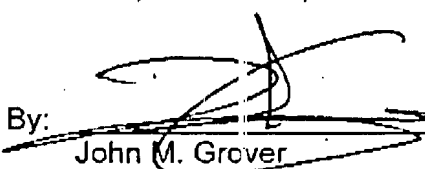
For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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